

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 610 of 1997

in

SPECIAL CIVIL APPLICATION No 574 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

B I BISHNOI

Versus

SUPERINTENDENT OF POLICE

Appearance:

MR IS SUPEHIA for Petitioner

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 19/06/97

ORAL JUDGEMENT (Per:Thakker.J)

This Letters Patent Appeal is directed against the order passed by the learned single Judge dismissing the petition of the appellant - petitioner for quashing and setting aside the departmental inquiry to be held against him on the ground that no show cause notice was issued to him and initiation of the proceedings are by the authorities who have no power authority or jurisdiction to initiate such proceedings and also on the ground that in respect of the self same allegations, criminal prosecution is pending. The learned single Judge did not entertain the petition at this stage on the ground that it was premature as no final order was passed. Regarding the authority and jurisdiction of District Superintendent of Police, the learned single Judge has observed that in accordance with the findings, the charge sheet issued by the District Superintendent of Police cannot be said to be one without any authority. Mr. Supehia learned counsel for the appellant submitted that the Superintendent of Police has no jurisdiction to entertain the proceedings and hence the petition ought to have been entertained. We do not find any substance in the argument of Mr. Supehia. As held in the case of Chanan Singh vs. Registrar of Co.op.Societies, Punjab reported in AIR 1976 SC 1821, ordinarily the the High Court while exercising the powers under article 226 of the Constitution does not entertain a petition if it is premature. In the case of Chainan Singh (Supra) also, the proceedings were sought to be revived and it was contended by filing a petition that revival was without jurisdiction and hence the order of revival should be quashed and set aside. The Supreme Court observed that no final order was passed and hence the petition was premature and could not have been entertained by the High Court inasmuch as it was open to an employee to raise all the contentions including that of jurisdiction of the authority to reopen the proceedings. In our opinion, the point is squarely covered by the above judgment in Chainan Singh's case (Supra). It is also open to the appellant to raise all contentions including the one of jurisdiction of District Superintendent of Police before him who shall decide the same in accordance with law. In view of the above fact, it is clear that the observation of the learned single Judge to the effect that "...the Superintendent of Police cannot be said to be one without authority" is merely of *prima-facie* nature .As and when such contention will be taken it will be decided by the authority. We hasten to add that we are not expressing any opinion that the D.S.P. has no jurisdiction. That question will be decided by the District Superintendent of Police. We do not enter into the merits of the

matter. It is open for the appellant-peititioner to raise all the contentions in accordance with law. In the facts and circumstances of the case the Letters Patent Appeal deserves to be dismissed and the same is accordingly dismissed. No costs.

(C.K.Thakker.J)

(S.D.Pandit.J)